



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/160893

PRELIMINARY RECITALS

Pursuant to a petition filed September 29, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on October 16, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly assessed an overpayment for child care benefits in the amount of \$342.51 from June 1, 2014 through June 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The agency approved childcare assistance for Petitioner and his wife for 12 hours per week beginning in January 2014. That approval continued through August 2014.

3. On June 1, 2014 Petitioner started a second job. Prior to starting this second job Petitioner obtained approval from the agency for additional childcare assistance. The agency authorized this additional childcare assistance between June 1, 2014 and June 30, 2014. The agency later learned that Petitioner's new employer was not a "qualified employer" because the employer did not have a workmen's compensation insurance policy. The agency informed Petitioner of this, and Petitioner quit his second job.
4. On September 15, 2014 the agency sent Petitioner a Child Care Overpayment Notice. The Notice stated that there was a \$342.51 childcare overpayment from June 1, 2014 through June 30, 2014.
5. The \$342.51 overpayment calculation assumes that 10 hours per week of the authorized childcare was correct. Additional childcare hours were incorrect. The overpayment is for the additional weekly hours in excess of 10.
6. On September 26, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.
7. Following the hearing the agency determined that they should have only authorized 6 hours per week of childcare.

DISCUSSION

The purpose of the Wisconsin Shares Child Care Program is to provide child care assistance for working low-income families. *Child Care Manual* § 1.1.1. The Wisconsin Shares Child Care Program is regulated under DCF 201 Administration of Child Care Funds (administrative code) and Wisconsin Statutes s. 49.155 Stats. *Child Care Manual* § 1.1.1.

In order to qualify for child care assistance, the recipient must be in an "approved activity." *Child Care Manual* § 1.5.0 (viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed October 2014)). In a two parent household both parents must be in an approved activity for the household to qualify for childcare assistance. *Id.*

The term "approved activity" is a term of art in child care assistance cases. Approved activities include employment with a qualified employer. *Id.* at § 1.5.3.1. To be a qualified employer, the employer must have a federal employer identification number, have a Worker's Compensation Insurance Policy, report wages to unemployment insurance, and comply with minimum wage laws. *Id.* at § 1.5.3.1. For example, if an employer pays a person in cash, and does not report those payments, then the employment would not be an approved activity, and a person working for that employer would not be eligible for child care assistance. *Id.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against Petitioner. *Id.*

In this case Petitioner did everything he could to prevent an overpayment. Petitioner was approved for 12 hours of childcare per week. Petitioner then obtained a second job. Prior to starting that job he verified with the agency that he would receive childcare assistance while working. The agency misinformed him that he would be eligible for additional childcare assistance. The agency also authorized and paid for the additional childcare. The agency then learned that his employer was not a qualified employer. The employer did not carry workman's compensation insurance, thus, it was not an approved activity, and Petitioner did not qualify for childcare assistance for his second job. When the agency learned of this mistake, the agency informed Petitioner, and Petitioner quit that job. Petitioner is now attempting to find a different second job with a qualified employer.

When the agency looked into this overpayment the agency learned that they had authorized Petitioner for 12 hours instead of 10 hours of childcare per week. At the time of the hearing, the agency believed childcare should have been authorized for 10 hours per week. The overpayment notice sent to Petitioner and her husband on September 5, 2014 stated that the total amount of overpayment was \$342.54 from June 1, 2014 through June 30, 2014. This was based upon the calculations that assumed 10 hours of childcare per week was correct. The record was left open following the hearing. The agency then learned that they only should have authorized 6 hours per week. There were only two days, Tuesday and Wednesday, when the parents' work schedules overlapped for two hours. That is a total of 4 hours. The agency would allow an additional one hour per day of travel time for a total of 6 hours.

In this case I find that the total overpayment is \$342.54. This overpayment is the result of agency error. I find it concerning that the notices included in the agency's exhibits do not include the reason for the overpayment. Petitioner and her husband provide an additional page that states the reason for the overpayment is an intentional program violation is checked. I do not see how this overpayment is the result of an intentional program violation. Included in the agency's exhibits is a letter from Petitioner's husband's employer stating that he was working there starting June 1, 2014. The name of the employer is included. It appears that this was oversight on the part of the agency. The agency did not verify the workmen's compensation insurance policy, and later learned that this employer was not a qualified employer. I find that this overpayment is the result of agency error. As a practical matter it does not matter if it is agency or client error as it is inside the collection period for both types of overpayments.

The notice that the agency sent to Petitioner stated that is the total amount of the overpayment from June 1, 2014 through June 30, 2014 was \$342.54. I have considered that the agency calculated the number of approved hours at 10 hours per week and on appeal they learned that they should have only authorized 6 hours per week. The appeal process is not meant to give the agency two kicks at the cat so to speak. The notice and worksheet state that the amount of overpayment is \$342.54. I find that that is correct for this short period of time.

I do not know what Petitioner could have done differently to avoid an overpayment in this case. The policy directs the agency to recoup all overpayments even if the overpayment is the result of agency error. It appears that there is an even larger overpayment for a larger period of time because the agency authorized 12 hours of childcare per week instead of six hours of childcare per week. That issue is outside this appeal. I find that the agency correctly calculated the overpayment between June 1, 2014 and June 30, 2014.

CONCLUSIONS OF LAW

The agency correctly calculated an overpayment for child care benefits in the amount of \$342.54 from June 1, 2014 through June 30, 2014. The overpayment was the result of agency error.

THEREFORE, it is

ORDERED

That the Petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of October, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 30, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud